IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

EARL LEON SPRADLIN — PLAINTIFF

VS. — CIVIL ACTION NO. 1:94CV317-D-D

CITY OF FULTON, MISSISSIPPI — DEFENDANT

BENCH OPINION

Pursuant to an order entered December 7, 1995, the court bifurcated this case with the parties agreeing to waive jury trial as to the issue of equitable modification of the statute of limitations. A bench trial was conducted Thursday, December 14, 1995, at which the undersigned presided. The sole contested issue was whether or not the plaintiff, Earl Leon Spradlin, had timely filed a charge with the EEOC under the Age Discrimination in Employment Act ("ADEA"). After hearing testimony and receiving other evidence in this matter, the undersigned is of the opinion that the plaintiff did not timely comply with the requirements of the ADEA and, thus, finds that his suit is barred.

FACTUAL FINDINGS

Earl Leon Spradlin was hired to work as a temporary part-time police officer by the City of Fulton on August 30, 1993. At the time he took the job, Spradlin was told that the City would be seeking to fill a permanent full-time position. In the fall of 1993, the City began taking applications for that full-time position. Subsequently, Spradlin and several other individuals

applied.[1] The City awarded the position to twenty-two year old Phillip Webb, one of the other applicants. Spradlin, age fifty-six, was informed of this decision on November 16, 1993 and his last day of work was November 17.

Some time early in 1994, Spradlin contacted the EEOC about filing charges and was informed of a deadline for filing. He signed a charge of discrimination on May 19, 1994 and the EEOC received it May 31, 1994. The plaintiff instituted the instant action on November 18, 1994. The defendant subsequently filed a motion for summary judgment contending that Spradlin's suit was time-barred in that he filed it outside the requisite 180-day limitation period. In a memorandum opinion and order dated November 17, 1995, this court denied summary judgment, finding factual disputes as to whether or not the defendant should be estopped from asserting the limitation defense and whether the statute should be equitably tolled so as to allow the suit to continue to trial. Upon bifurcation, the parties addressed these two issues, equitable estoppel and tolling, during the bench trial.

CONCLUSIONS OF LAW[2]

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[1]The Hiring Policy in effect at the relevant time required that certain tests be administered with set percentages to be given for each specific criteria; i.e., written test scores counted 50%, agility test scores 25%, interviews 10%, and prior law enforcement 15%, altogether totaling 100%.

[2]In its memorandum opinion dated October 17, 1995, the court addressed the issue of when the 180 days began to run. Finding that the time limit had passed, the genuine issues of material

The Fifth Circuit held in Coke v. General Adjustment Bureau, Inc., that "the 180-day provision [in the ADEA] is a pre-condition to filing suit in district court, but is not related to the subject matter jurisdiction of the court. The provision is subject to equitable tolling." 640 F.2d 584, 595 (5th Cir. 1981) (en banc). Since the Coke holding, Fifth Circuit law has embraced both equitable tolling and equitable estoppel as means for allowing an ADEA plaintiff to avoid the 180-day bar. "'Equitable tolling focuses on the plaintiff's excusable ignorance of the employer's discriminatory act. Equitable estoppel, in contrast, examines the defendant's conduct and the extent to which the plaintiff has been induced to refrain from exercising his rights.'" Rhodes v. Guiberson Oil Tools, 927 F.2d 876, 878 (5th Cir. 1991) (quoting Felty v. Graves-Humphreys, Co., 785 F.2d 516, 519 (4th Cir. 1986)), cert. denied, 502 U.S.868, 112 S. Ct. 198, 116 L.Ed.2d 158 (1991); Conaway v. Control Data Corp., 955 F.2d 358, 362 (5th Cir. 1992). Spradlin asserted both theories in an effort to avoid dismissal under the statute of limitations and the court addresses them separately below.[3]

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fact which precluded summary judgment pertained to the applicability of equitable modifications of the statute of limitations. The court will not reiterate its earlier analysis but confines its discussion to the equities involved.

[3]The plaintiff has the burden of proof in regard to both theories: (1) that the defendant should be estopped from relying on the EEOC filing period, and (2) that the statute should be equitably tolled. Rhodes v. Guiberson Oil Tools Div., 927 F.2d

I. EQUITABLE ESTOPPEL

The Fifth Circuit has adopted the same standard employed by the Fourth Circuit in determining when an employer should be estopped from asserting as a defense the 180-day time limit for filing complaints with the EEOC. Clark v. Resistoflex Co., 854 F.2d 762, 768-69 (5th Cir. 1988) (citing Felty, 818 F.2d at 1128). The Fourth Circuit described the "level of employer culpability required to trigger equitable estoppel in terms of a recklessness standard." Id. The employer must have (1) deliberately designed to delay the employee's filing, or (2) taken actions which the employer should have unmistakably understood would result in such delay. Id.

The plaintiff in Clark was forty-eight years old when his employer terminated him. Id. at 674. His termination letter set out several details concerning his pending unemployment and also described the terms under which he would receive severance pay. Finally, the letter reserved to the employer the right to terminate the severance agreement should the plaintiff violate any "obligations hereunder or take any action, by word or deed, which would be derogatory or detrimental to or otherwise prejudicial to" the employer. Id. The Fifth Circuit held that, under those circumstances, a reasonable trier of fact could conclude that the employer's actions deterred the plaintiff from timely filing a

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876, 879 (5th Cir. 1991).

charge with the EEOC and thus that estoppel could be appropriate. Id. at 769.

Similarly, in Coke, the Fifth Circuit ruled that the district court improperly awarded the defendant summary judgment on the ground that the plaintiff filed his EEOC charge out of time. 640 F.2d at 595. The plaintiff in that case notified an officer of a major client of his employer that he had been demoted and asked the officer to seek his reinstatement. The officer complied and inquired of the defendant employer several times as to the plaintiff's status. Each time the employer represented that it would take the appropriate action to restore the plaintiff to his previous position. Coke, 616 F.2d 785, 786 (5th Cir. 1980), reh'g en banc, 640 F.2d 584 (5th Cir. 1981). In reliance on those statements which the officer had conveyed, the plaintiff delayed filing his charge with the EEOC until after the exhaustion of his time limit. Under those circumstances, the Fifth Circuit reversed the lower court's grant of summary judgment in favor of the defendant and held that genuine issues of material fact existed as to whether or not the defendant should be estopped from asserting the time limit as a defense. 640 F.2d at 595-96.

The conduct of which the defendant in the case sub judice is accused does not rise to the level of egregiousness portrayed in the above cases. Spradlin contends that when he was notified that he had not been chosen for the full-time position, Police Chief Ray

Barrett told him, "If there's any consolation to you, we'll be hiring another officer. . . . It's in the works to hire another one."[4] The conversation left Spradlin with the "impression" that since his scores had been the second highest, he was next in line to be hired and that such action would soon take place. He asserts the defendant should be estopped on that basis.

The undersigned disagrees. Based on the above conversation, even taking into account the friendship between the two men involved, it cannot be said that the defendant "'should unmistakably have understood'" that its actions would result in Spradlin's delay. Clark, 854 F.2d at 769 (quoting Felty, 818 F.2d at 1128). Spradlin admitted that the chief did not tell him when the next hiring would take place or that Spradlin would be the one hired. The court is of the opinion that the defendant should not be estopped from asserting the time limitation in that its conduct cannot be classified as the type that would induce a reasonable person to refrain from exercising his legal rights. See Conaway, 955 F.2d at 363 (holding defendant not estopped even though assured employee that his termination was under review when never represented to employee that upon review, he would be rehired); Price v. Litton Business Sys., Inc., 694 F.2d 963, 965 (4th Cir.

[4]In his testimony, the chief explained that he had been referring to the fact that the city had applied for a grant and if it came through, there would be enough money to hire another full-time officer. As of November 16, 1993, the grant had yet to be approved and the chief did not mention the grant to Spradlin.

1982) ("We have recently held as a matter of law . . . that the attempt to mitigate the harshness of a decision terminating an employee, without more, cannot give rise to an equitable estoppel.").[5] Although his theory of equitable estoppel fails as a basis for modifying the 180-day limitation, Spradlin also asserted equitable tolling as an alternative basis, which the court addresses below.

II. EQUITABLE TOLLING

The ADEA states

> Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the [EEOC] setting forth information as the Commission deems appropriate to effectuate the purposes of this chapter.

29 U.S.C. § 627. Spradlin argues that such notices were not posted and the statute should be tolled on that basis. "When it is found that the employer has failed to post the notice required by this section, equitable tolling can be applied." Clark, 854 F.2d at 767. However, the mere failure to post notices alone is

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[5]In Price, the defendant's conduct could be construed as much more likely to cause an employee to sleep on his legal rights. The defendant informed the plaintiff, Price, "'that other opportunities [within the company] . . . would be investigated for him,' that his supervisors wanted him to stay with the company and during the few weeks ahead would 'contact [him] with some concrete offers for [his] consideration,' . . . and that the defendant 'was making every effort to find another opportunity in the [company] which would be acceptable to [him].'" Price, 694 F.2d at 964-65 (alterations in original). The Fourth Circuit held that those actions were insufficient to justify tolling the statute on the basis of equitable estoppel.

insufficient to support equitable tolling when "the employee has acquired actual knowledge of his ADEA rights or acquires the 'means' of such knowledge by consulting an attorney about the discriminatory act." Id. at 768. The court is faced with two inquiries in regard to this issue: (1) Did the defendant comply with the statute by posting sufficient notices? and (2) If not, when did Spradlin acquire either actual knowledge of his rights or the means to discover such rights?

A. REQUIRED POSTED NOTICES

> An employer's duty to post section 627 notices does not require posting at every location where the employer does business, so long as the notice that is posted provides employees with a 'meaningful opportunity of becoming aware of their ADEA rights.'

Id. (emphasis added). If the employer discharges this duty, the employee is deemed to have constructive knowledge of his legal rights and equitable tolling is inappropriate. Id. The testimony during the bench trial was unequivocal that no notices were posted inside the Fulton Police Department itself.[6] At the relevant times, however, the department was located in the City Hall.[7] On a bulletin board in the lobby of City Hall, which was easily accessible to police officers coming out of the department or in

[6]Testimony indicated that the police department was approximately the size of a jury box. Also, the City of Fulton employed Spradlin and not the Police Department itself.

[7]Since that time, the police department has been moved to separate building.

off the street,[8] a notice was posted. As such, the court is of the opinion that the notice was posted in a location "readily observable" to Spradlin, who was constantly in and around City Hall during his employment of approximately three months.

The parties also disputed whether the contents of the notice were sufficient under the ADEA.[9] The statute itself provides very little guidance, merely stating that such notices must be "prepared or approved" by the EEOC.[10] 29 U.S.C. § 627. Case law appears to be just as sparse on this issue. The Fifth Circuit has held that

> an employer's notice must provide employees with a meaningful opportunity of becoming aware of their ADEA rights so that one may reasonably conclude that the employees either knew or they should have known of their statutory rights.

Clark, 854 F.2d at 767 (quoting Charlier v. S.C. Johnson & Son, Inc., 556 F.2d 761, 762 (5th Cir. 1977)). The First Circuit has held that "[e]quity only requires that a plaintiff be aware that a

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[8]Testimony indicated that the bulletin board was placed in the general location of where city residents came to pay their gas and light bills.

[9]The court notes that neither side provided any authority on this issue, however.

[10] The regulations provide that "[e]very employer . . . which has an obligation under the [ADEA] shall post and keep posted in conspicuous places upon its premises the notice pertaining to the applicability of the Act prescribed by the Commission or its authorized representative." 29 C.F.R. § 1627.10 (1995). Neither of the parties offered any evidence as to whether or not the EEOC prepared, approved, or authorized the notice in question.

statute has been passed that protects workers against age discrimination. It does not require that he know of all the filing periods and technicalities contained in the law." Kale v. Combined Ins. Co., 861 F.2d 746, 754 (1st Cir. 1988).

> The notice in question in the case sub judice states:
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> This facility is operated in accordance with U.S. Department of Agriculture policy, which prohibits discrimination on the basis of race, color, sex, age, handicap, religion, or national origin.

The court is of the opinion that the posted notice was sufficient to inform Spradlin that discrimination on the basis of age was unlawful. However, even if the court were to hold the notice insufficient, its inquiry could not stop there since, if Spradlin had actual knowledge of his ADEA rights or the "means" of acquiring such knowledge, tolling would still be inappropriate.

B. SPRADLIN'S KNOWLEDGE OF HIS RIGHTS

Since equitable tolling focuses on the employee's excusable ignorance, actual knowledge of his legal rights forecloses the application of equity under these circumstances. Clark, 854 F.2d at 768. Spradlin testified that he was unaware that it was unlawful to discriminate on the basis of age on November 16, 1993, and that he did not become aware of his rights until early 1994. Under these facts, it would appear that Spradlin did not possess the knowledge required to defeat tolling.

However, Spradlin also testified that he had seen ADEA posters in factories prior to November 16, 1993, knew they discussed age

discrimination, and that he suspected age was the reason he was passed over for the full-time position. It is unnecessary "'to toll the notification period up to the time that the employee obtains knowledge of his specific rights under the ADEA.'" Id. (quoting McClinton v. Alabama By-Products Corp., 743 F.2d 1483, 1486 (11th Cir. 1984)). General knowledge concerning age discrimination laws is all that is required for the court to find Spradlin had "actual knowledge" of his legal rights. Id. The court, as the fact finder, is of the opinion that Spradlin possessed such general knowledge since he testified he had earlier seen posted ADEA notices concerning age discrimination. As such, tolling is inappropriate and Spradlin's ADEA claim is time-barred.

CONCLUSION

As set forth above, Spradlin has failed to prove by a preponderance of the evidence that the 180-day time limitation for filing a claim with the EEOC should be subject to equitable modification so as to allow his suit to be tried on the merits. As such, Spradlin's ADEA claim shall be dismissed as barred by the statute of limitations.

A final judgment in accordance with this opinion shall issue this day. This the _____ day of December, 1995.

United States District Judge

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FINAL JUDGMENT

After a bench trial and pursuant to a memorandum opinion entered this day, the court is of the opinion that relief shall be granted to the defendant, City of Fulton, as set forth below. Therefore, it is hereby ORDERED THAT:

1) The plaintiff, Earl Leon Spradlin, failed to timely file his ADEA claim with the EEOC.

2) The defendant, City of Fulton, is not estopped from asserting the statute of limitations as a defense in this action.

3) The statute of limitations is not subject to equitable tolling under the facts of this case.

4) The plaintiff's claim is barred by the statute of limitations.

5) This case is dismissed and final judgment as to all counts is hereby entered.

All briefs, exhibits, affidavits, and other matters considered by the court are incorporated into the record.

SO ORDERED, this ____ day of December, 1995.

United States District Judge